firm were at the same time adjudged insolvent, but no individual creditors appeared. By Cal. St. 1895, p. 146 § 48, when a creditor has a mortgage on real property of the debtor, he shall be admitted as a creditor in insolvency proceedings of the debtor's estate only for the balance of the debt after deducting the value of the mortgaged property. The Anglo-California Bank, a firm creditor, held a mortgage on the homestead of one of the individual partners as partial security for the debt. On appeal by the Bank from a decree directing the bank to deduct from its proven debt the value of the homestead. *Held*, that appellant should have been permitted to prove its entire claim. *In re Levin Bros. Estate* (1903), — Cal. —, 73 Pac. Rep, 159,

That a creditor in insolvency proceedings may prove his whole claim if the security which he holds is given by a third person is a recognized principle. *In re Dunkerson*, 4 Biss. (U. S.) 253. The same is likewise true if the claim is against a partnership and his security is upon the separate estate of one of the individual partners. *In re Holbrook*, 2 Lowell (U. S.) 259. Is an exception to this rule created by the fact that there are no individual creditors? The court in this case hold that such a condition makes no difference and that the bank, the creditor, may still prove its entire claim. The authority cited is *In re Thomas*, 8 Biss. (U. S.) 139. Furthermore, the court hold that the bank may prove its entire claim because the mortgage in question is upon exempt property. Their reasoning to sustain this conclusion is that, as exempt property does not pass to the assignee any way, a mortgage upon it is in the precise position of a mortgage on the property of a third person. The total amount of assets to be distributed among the general creditors is not diminished by a retention of such security nor would the fund be added to by its surrender. This holding creates a precedent well supported by reason.

INSURANCE—BENEFIT SOCIETIES—CHANGE OF BENEFICIARIES—PAYMENT OF PREMIUMS.—One Spengler took out a one thousand dollar certificate of insurance in a mutual benefit society. He made his wife beneficiary. He paid the premiums for a time, and then gave the certificate to his wife, saying that he made her a present of the "paper," that he had no money to keep it up, and that she could pay it if she chose. She took the certificate and paid the subsequent premiums. The society's rules allowed a member to change a beneficiary by surrendering up the old certificate, or making affidavit that it was lost or beyond his control, and then taking out a new one in favor of the new beneficiary. Spengler made such affidavit, took out a new certificate, and named a new beneficiary without the consent of his wife. She now files a bill in equity to set aside the new certificate. *Held*, That complainant had acquired no vested rights, and the bill could not be sustained. Neither could premiums paid by the complainant be recovered. *Spengler* v. *Spengler* (1903), — N. J. — 55 Atl. Rep. 285.

John J. Murphy took out a two thousand dollar certificate of insurance in the same society, Catholic Benevolent Legion. He made his wife original beneficiary. Becoming unable to pay the premiums, he told his wife if she would continue the payments she should have the benefit of the certificate. This she did, and she supported him, though he was able to support himself, but for his habit of drinking. Afterward, under a by-law of the society for change of beneficiaries, he attempted, while at the house of his sister, and under her influence, to change the beneficiary. The new certificate was to give one half to his wife and the other to his sister. He died, and the widow claimed the whole amount. The society paid one half the money into court, and brought this bill of interpleader against the widow and sister. *Held*, That the widow was entitled to the whole amount. That while there was

evidence of undue influence, and a failure on the part of the assured to comply with certain technicalities necessary to make a new certificate effective, yet without this the wife's equities were too strong to be overcome. *Supreme Council Cath. Benev. Legion* v. *Murphy* (1903), — N. J. — 55 Atl. Rep. 497.

In *Spengler* v. *Spengler*, the court seemed to consider that very little short of an agreement binding the assured not to change the beneficiary, would have been sufficient, while in *Benevolent Society* v. *Murphy*, the wife's equities were given greater effect and held to be so strong as to render a change ineffectual. The weight of authority is undoubtedly to the effect that when the by-laws of a benefit society allow a member to change the beneficiary, he can exercise that power at any time by complying with the by-laws, unless he has bound himself to the beneficiary upon a good and sufficient consideration not to do so. *Barton* v. *Prov. Mutual R. Assn.*, 63 N. H. 535. *Lamont* v. *Hotel Men's Assn.*, 30 Fed. Rep. 817; *Masonic Mutual Benefit Assn.* v. *Burkhardt*, 110 Ind. 189, 11 N. E. Rep. 449; *Hopkins* v. *Hopkins*, 92 Kentucky 324, 17 S. W. Rep. 864; *Mulderick* v. *Grand Lodge A. O. U. W.*, 155 Pa. St. 505; *Splawn* v *Chew*, 60 Tex. 532. These cases must be distinguished, however, from those relating to the ordinary life policy. In the latter the beneficiary takes a vested interest, which cannot be divested without his consent. *Brown* v. *Murray*, 54 N. J. Eq. 594; *Bank* v. *Hume*, 128 U. S. 195.

MORTGAGE—"CLOG" ON REDEMPTION—COLLATERAL ADVANTAGE. The holder of shares in a tea company agreed in a mortgage of the shares that "always thereafter" he would use his best endeavors to have the mortgagee act as broker for the company in selling tea and personally to pay a commission on all tea not sold through the mortgagee. The mortgage was paid. *Held*, that the agreement was not binding as being a fetter on the equity of redemption, and suit could not be maintained thereon. *Bradley* v. *Carritt*, [1903], A. C. 253.

The ground for the decision is clearly stated by Lord Davey: "The principle, as it appears to me, is that on payment of the principal, interest and costs, together with any bonus or anything in the nature of a bonus which has been properly stipulated for, and has become payable,,the mortgage contract comes to an end, and the mortgagor is entitled to get his property back, unaltered in character, condition, and incidents, and is henceforth relieved from the burden imposed upon him by the contract." See also, *Jarrah* etc. *Corporation* v. *Samuel* [1903], 2 Ch. 1, I MICHIGAN LAW REVIEW 73, and *Law Quarterly Review*, July, 1903, p. 248.

MUNICIPAL CORPORATIONS—DEFECTIVE CULVERT—LIABILITY FOR DAMAGE TO ADJOINING PROPERTY—INDEPENDENT OFFICERS.—A culvert was constructed under a street in the City of Manchester by a board of street and park commissioners appointed under a statute conferring upon it full charge, management and control of the building, constructing, repairing and maintaining of the streets in said city, and vesting in it "all the powers now by law vested in the board of mayor and aldermen, the city councils and the highway surveyors of the various highway districts of said city." Owing to the insufficiency of the culvert, of which the city had notice, plaintiff's land was damaged by water, and he brings suit against the city. *Held*, that by common law, towns and cities are liable for damage occasioned an owner of land adjacent to a highway so constructed by a public officer as to turn water upon the adjoining land, providing, after reasonable notice, it neglected to remedy the difficulty; and that it could not be presumed that the legislature, by plac-